

16-299 NATIONAL ASSOCIATION OF MANUFACTURERS V. DEPT. OF DEFENSE

DECISION BELOW: 817 F.3d 261

LOWER COURT CASE NUMBER: 15-3751

QUESTION PRESENTED:

In June 2015, respondent agencies promulgated a final rule defining the term "the waters of the United States" and hence the scope of Clean Water Act jurisdiction. The National Association of Manufacturers challenged that rule in district court under the Administrative Procedure Act. State, municipal, industry, and environmental challengers likewise filed APA suits, but in addition filed protective petitions for review in the courts of appeals, citing uncertainty about whether the rule challenge falls under the CWA's judicial review provision, 33 U.S.C. § 1369(b)(1).

The petitions for review were consolidated in the Sixth Circuit. The NAM intervened as respondent in the Sixth Circuit and moved to dismiss the petitions for want of jurisdiction. After full briefing and argument, the Sixth Circuit held that it, not the district courts, has jurisdiction to decide challenges to the rule. But only one judge actually believed that to be the correct outcome. Although two panel members concluded that § 1369(b)(1) *precludes* jurisdiction, one of them reasoned that he was bound by "incorrect" circuit precedent to take jurisdiction under § 1369(b)(1)(F), which requires that agency actions "in issuing or denying any permit under" § 1342 be reviewed by the court of appeals.

This recurring jurisdictional issue has divided the circuits, wasted judicial and party resources, and delayed the resolution of important rule challenges.

The question presented is whether the Sixth Circuit erred when it held that it has jurisdiction under 33 U.S.C. § 1369(b)(1)(F) to decide petitions to review the waters of the United States rule, even though the rule does not "issu[e] or den[y] any permit" but instead defines the waters that fall within Clean Water Act jurisdiction.

CERT. GRANTED 1/13/2017